

REMARKS

The Examiner has withdrawn the Final Office Action after considering Applicant's arguments filed on March 17, 2005.

Claims 1-21, 23, 25, 28-30, 33, and 35-44 remain pending in this application. Claims 13-16, 18, 19 and 25 are rejected. Claims 1-12, 20, 21, 23, 28-30, 33, and 35-44 are allowed.

Claim 17 is objected to by the Examiner as being dependent upon a rejected base claim but indicated that it would be deemed allowed if rewritten in independent form including all limitations of the base claim and any intervening claim. In light of the amendments and argument provided herein, Applicants respectfully assert that all claims of the present invention are allowable.

The Examiner rejected claims 13-16, under 35 U.S.C. § 102(b) as being anticipated by British Telecom--WO 95/31864 (*BT*). Applicants respectfully traverse this rejection.

As previously admitted by the Examiner, *BT* does not teach, disclose, or suggest all of the elements of claim 1 of the present invention. In a previous office action (see the Final Office Action dated January 12, 2005), the Examiner admitted that *BT* does not disclose the claim limitation "wherein the monitoring takes place at or about the point where the test signal was applied". Claim 13 (as amended) calls for a monitoring circuit to monitor a response of the copper line to the test signal at about the point where the signal generator applies a test signal, which is the subject matter, as expressly asserted by the Examiner, that is not disclosed by *BT*. Therefore, claim 13 is not taught, disclosed or suggested by *BT*.

BT discloses a system for testing a telephone line for suitability using a field unit that is positioned between a customer's telephone and the network termination equipment to produce a test signal. Simply because the same telephone line is being tested, does not mean it is at or about the same point. There are many electrical obstacles on a telephone line. In this case, **BT** is directed to placing a field unit between two objects, i.e., customer's telephone and the network termination equipment and measuring the test results on another location. Hence **BT** is in contrast with the elements of claims 13. In contrast to claim 13, **BT** is directed to monitoring the test results at another location. Accordingly, **BT** is in contrast with elements of the claim 13 (as amended) of the present invention.

BT is directed to testing a telephone line between a consumer's network termination equipment and an exchange. Claim 13 (as amended) of the present invention relates to a testing system adapted to determine the suitability of the line from a single point of the line. In contrast, **BT** discloses a system for testing a telephone line for its suitability using a field unit 5 positioned between the customer's telephone and the network termination equipment to produce a test signal and an exchange unit 6 positioned at the exchange. As called for in claim 13, Applicants' invention includes "applying a test signal at a point in the copper line" and "monitoring a response of the copper line at about the point where the test signal was applied." **BT** fails to teach or suggest providing and monitoring the test signal at a single point in the line. **BT** does not teach or suggest this feature. Therefore, claim 13 of the present invention is not anticipated or suggested by **BT**.

Independent claim 13 is allowable for at least the reasons cited above. Additionally, dependent claims 14-19, which depend from independent claim 13, are also allowable for at least the reasons cited above.

The Examiner rejected claims 18, 19 and 25 under 35 U.S.C. 103(a) as being unpatentable over British Telecom-WO 95/31864 (*BT*) in view of U.S. Patent 6,047,051 (*Ginzboorg*).

The Examiner uses *Ginzboorg* to make obvious the element of the computer system of claim 25, as well as the processor and memory of claims 18 and 19. The Examiner cites *Ginzboorg* to make obvious the element of contacting a vendor with the physical location information to receive service availability based on the physical location, as called for by claim 25 of the present invention. However, *Ginzboorg* merely discloses a computer system, including a customer terminal, modem, internet connection, and a billing system to provide for a computer purchase transaction. See, Fig. 2, col. 4, lines 1-36. However, *Ginzboorg* does not disclose contacting a vendor for supplying service relating to service availability relating to a physical location of a communication line, using out-of-band data transmission protocol over the modem, as called for by claim 25. Additionally, claim 25 calls for a test unit for determining the suitability of a communication line by providing a test signal with a known relation to an out-of-band protocol and monitoring a response of the communication line to the test signal at about the point on the communication line where the test signal was provided, which are elements that are not taught or suggested by *BT*, *Ginzboorg*, or their combination. Claims 18 and 19 also call for a monitoring circuit to monitor a response of the copper line to the test signal at about the point

where the signal generator applies a test signal, which are elements that are not taught or suggested by **BT**, **Ginzboorg**, or their combination.

In fact, **Ginzboorg** simply does not disclose any subject matter even remotely related to testing a system adapted to determine the suitability of the line from a single point of the line or monitoring a response of the copper line to the test signal at about the point where the signal generator applies a test signal. Therefore, the mere usage of **Ginzboorg** by the Examiner to make obvious elements of claims 18, 19, and 25 is improper hindsight reasoning. **BT** is directed to testing a telephone line between a consumer's network termination equipment and an exchange. **BT** discloses a field unit that is positioned on a telephone line to perform field tests. In contrast, **Ginzboorg** discloses an un-related subject matter that deals with internet transaction using a computer. Without using *improper* hindsight reasoning, those skilled in the art would not be motivated to combine disclosures of such diverse respective subject matter to make obvious any claim of the present invention.

Additionally, Applicants assert that even if, *arguendo*, **BT** and **Ginzboorg** were to be combined, all of the elements of the claimed invention would still not be disclosed or made obvious. As described above, **Ginzboorg** merely discloses a computer system, a modem, and a billing system to perform a transaction using a computer. **BT** discloses a system for testing a telephone line for suitability using a field unit that is positioned between a customer's telephone and the network termination equipment to produce a test signal. **BT** fails to explicitly disclose monitoring a response of the copper line at about the point where the test signal is applied. Therefore, even combining **BT** and **Ginzboorg**, all of the elements of claims 18, 19, and 25 would not be taught, disclosed, or made obvious by **BT**, **Ginzboorg**, or their combination.

Accordingly, claims 18, 19, and 25 (as amended) are allowable for at least the reasons cited above.

Reconsideration of the present application, with regards to claims 13-16, 18-19, and 25, is respectfully requested.

Applicants acknowledge and appreciate that the Examiner had allowed claims 1-12, 20, 21, 23, 28-30, 33, and 35-44. In light of the amendments and arguments provided herein, claims 13-16, 18-19, and 25 are also allowable. Therefore, claims 1-21, 23, 25, 28-30, 33, and 35-44 are allowable.

In light of the arguments presented above, Applicants respectfully assert that all of the pending claims of the present invention are allowable. In light of the arguments presented above, a Notice of Allowance is respectfully solicited.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Houston, Texas telephone number (713) 934-4069 to discuss the steps necessary for placing the application in condition for allowance.

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